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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 23 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

Use of N11 Codes and Other)

Abbreviated Dialing Arrangements)

CC Docket No. 92-105

COMMENTS

BellSouth Corporation, by counsel, on behalf of its affiliated companies, files these comments in support of Ameritech's Petition for Clarification filed in this proceeding on March 28, 1997.

Ameritech argues that the Commission should not change the definition of "adjunct to basic" and "enhanced service," and requests that the Commission strike footnote 170 from its First Report and Order. BellSouth agrees. As Ameritech has shown, the classification of individual services -- and in particular, directory assistance services -- as "adjunct to basic" has always been based upon the purpose served by the service, and not the geographic scope of the service or data involved.¹

Indeed, in its N11 NPRM² the Commission stated, "we do not propose to disturb . . . the use of 411 for directory information services that are classified as basic or adjunct to basic services for purposes of this Commission's rules even if those numbers are not presently used in

¹ Ameritech's Petition for Clarification at 8-15.

² The Use of N11 Codes and Other 92-105 [sic] Abbreviated Dialing Arrangements, Notice of Proposed Rulemaking, CC Docket No. 92-105, 7 FCC Rcd 3004 (1992).

some geographic areas for those purposes.”³ The Commission went on to “inquire whether the 411 code should be restricted to the provision of directory assistance information that is classified as basic or adjunct to basic.”⁴ In its First Report and Order the Commission found the “continued use of 411 to call local directory assistance services justified by public convenience and necessity,” and chose not to “alter the assignment of the 411 code.”⁵

The Commission did not, however, restrict use of the 411 code to the provision of directory assistance information that is classified as basic or adjunct to basic. Instead, the Commission wrote:

While we encourage LECs to expand the range of services they offer to the public, we recognize the possible competitive advantage that LECs would be given if they were able to use N11 codes for their enhanced services offerings. We conclude, therefore, that a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services.⁶

BellSouth does not object to the continued nationwide assignment of the 411 Service Code for directory information services that are classified as basic or adjunct to basic services for purposes of this Commission’s rules even if this Service Code is not currently used in some geographic areas for those purposes. BellSouth does not object to the Commission’s decision to condition a LEC’s offering of enhanced services using a 411 code on the LEC’s offering access to 411 on a reasonable nondiscriminatory basis to competing enhanced service providers in the local

³ Id. at 3005, ¶ 11.

⁴ Id.

⁵ The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 92-105, FCC 97-51, (released February 19, 1997) at ¶ 47.

⁶ First Report and Order at ¶ 48.

service area for which it is using the code to facilitate distribution of their enhanced services, nor to the Commission's determination that Bell Operating Companies are subject to additional safeguards pursuant to Computer III.⁷

BellSouth nevertheless requests that the Commission clarify that the First Report and Order does not disturb and in fact confirms the continuing national assignment of the 411 Service Code but does not otherwise limit or prescribe what directory assistance is or how it can be provisioned. Specifically, the Commission should, as Ameritech suggests, strike footnote 170 of the First Report and Order.⁸ In the alternative, the Commission should clarify that the dicta contained in footnote 170 of the First Report and Order was neither intended to limit the range of directory assistance services that LECs may offer to the public using a 411 code, nor to constitute a blanket determination that certain services that do not otherwise qualify as enhanced services under the Commission's rules are nevertheless deemed to be "enhanced" pursuant to this dicta.

At footnote 170 the Commission wrote, in relevant part:

By "traditional" directory assistance services we refer to operator provision of local telephone numbers. The Commission has determined that traditional directory assistance services are "adjunct" to basic services are regulated pursuant to Title II of the Communications Act.⁹

The qualifier "traditional" is used by the Commission in connection with "directory assistance services" for the first time in the First Report and Order. Although the First Report and Order states that the N11 NPRM sought comment on whether LEC use of 411 should be restricted to the provision of "traditional directory assistance services,"¹⁰ the qualifier "traditional"

⁷ Id.

⁸ Ameritech's Petition for Clarification at 15.

⁹ Id. at n.170 (citations to Computer II proceedings omitted).

¹⁰ Id. at ¶ 48

was not, in fact, used in the N11 NPRM. Nor does the qualifier “traditional” appear in connection with the term “directory assistance services” in the Computer II orders as cited by the Commission in the First Report and Order.¹¹ An inference can be drawn that the Commission intended, by adding the qualifier “traditional,” to limit the type of directory assistance information provided in connection with a 411 code by all LECs, incumbent and new market entrant alike, to something called “traditional” directory assistance services which is defined in dicta as “operator provision of local telephone numbers.”¹² Thus, the First Report and Order could be read to prohibit the assignment of a 411 code for use in connection with local access to automated provision of directory assistance or the automated or operator provision of non-local telephone numbers.

The Commission should clarify that this result was not its intent. In the NATA Centrex Order¹⁴ this Commission determined that directory assistance:

... provides only “that information about another subscriber’s telephone number which is necessary to allow use of the network to place a call to that other subscriber. An offering of access to a data base for the purpose of obtaining telephone numbers may be offered as an adjunct to basic

¹¹ Id.

¹² By “local telephone numbers” BellSouth assumes the Commission meant numbers within the LATA, or if broader, the geographic territory encompassed within the relevant Numbering Plan Area.

¹⁴ North American Telecommunications Association Petition for Declaratory Ruling Under Section 64.702 of the Commission’s Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, ENF 84-2, Memorandum Opinion and Order (released May 29, 1985)

telephone service; an offering of access to a data base for most other purposes is the offering of an enhanced service.¹⁵

There is no relevant precedent to prohibit the provision of non-local telephone numbers in a directory assistance offering in connection with a 411 code.¹⁶ Indeed, the provision of a telephone number to one subscriber through access to a data base of telephone numbers of subscribers anywhere on the public switched telephone network so that the first subscriber may use the network to place a call between the two is the heart of directory assistance service.

Because of interLATA restrictions which existed at the time of the Commission's N11 NPRM many LECs and BOCs were limited in their ability to offer local access to non local telephone numbers through their 411 directory assistance service. Since passage of the Telecommunications Act of 1996, however, these restrictions have been replaced by an interconnection regime that contemplates competition in the local exchange and exchange access markets and which includes, as the Commission notes, obligations on incumbent LECs to provide nondiscriminatory access to 411 and its associated databases. To the extent that new market entrants may provide non local telephone numbers through directory assistance via 411 access, but incumbent LECs are not allowed to do so, such new entrants would obtain an unfair

¹⁵ Id. at ¶ 26.

¹⁶ To the extent footnote 170 announces a new rule defining the scope and extent of basic and adjunct directory services, it was promulgated in derogation of the Administrative Procedure Act, 5 U.S.C. § 553. Montgomery Ward v. F.T.C., 691 F.2d 1322, 1329 (9th Cir. 1982) (amendment to rule is proper only when adequate notice is provided to affected parties by agency pursuant to appropriate rulemaking procedures); Harley v. Lyng, 653 F. Supp. 266, 276 (E.D. Pa 1986) (revision of former regulations invalid when not promulgated in accordance with APA procedures for full notice and comment rule-making notwithstanding agency characterization of revision as interpretive); National Retired Teacher's Association v. U.S. Postal Service, 430 F. Supp. 141, 148 (D.D.C. 1977), affirmed 593 F.2d 1360 (D.C. Cir. 1979) (rule that constitutes a change in prior agency position and has substantial impact on rights and obligations of public is invalid if there has not been compliance with notice and comment requirements of APA even if rule is interpretive).

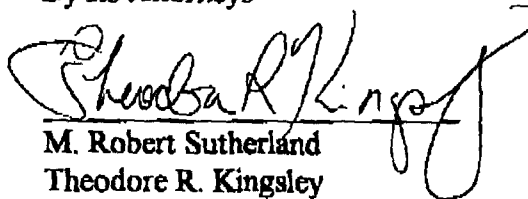
competitive advantage in the public's association of superior (all telephone numbers provided by CLEC 411 live or automated operator services) and inferior (only local telephone numbers provided by ILEC 411 live operator services) directory assistance services.

The Commission can cure this competitive asymmetry in one of two ways. It could limit the national assignment of the 411 Service Codes to all LECs, ILECs and CLECs alike, for the special purpose of operator provision of local telephone numbers. The better course, however, is to clarify that the 411 Service Code is assigned for use in connection with directory assistance services which provide subscribers with local access to information about telephone numbers of subscribers anywhere on the public switched telephone network in order to allow use of the network to place a call to the number provided.

Respectfully submitted,

BELLSOUTH CORPORATION

By Its Attorneys


M. Robert Sutherland
Theodore R. Kingsley

Suite 1700
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-3392

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